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15 *and Amelco USA, LLC*

16 **UNITED STATES DISTRICT COURT**

17 **DISTRICT OF NEVADA**

18 INTERNET SPORTS INTERNATIONAL,
19 LTD.,

20 Plaintiff,

21 vs.

22 AMELCO USA, LLC. et al.,

23 Defendants.

CASE NO. 2:23-cv-00893-ART-NJK

OPPOSITION TO PLAINTIFF ISI'S
MOTION TO MODIFY SCHEDULING
ORDER

24 Defendants Amelco USA, LLC (“AUSA”) and Amelco UK, Ltd. (“AUK”) hereby oppose
25 Plaintiff Internet Sports International, Ltd.’s (“ISI”) Motion to Modify Scheduling Order filed on
26 January 27, 2024. This opposition is based on the below memorandum of points and authorities,
27 the exhibits and papers on file, and any argument the Court may direct at hearing.

28 **MEMORANDUM OF POINTS AND AUTHORITIES**

I. INTRODUCTION

On January 23, 2024, the parties submitted a Joint Motion to Modify Scheduling Order
 (“Joint Motion”). *See* Joint Motion to Modify Scheduling Order (ECF No. 75). In that motion,
 signed by counsel pursuant to Federal Rules of Civil Procedure, Rule 11, the parties’ submitted to
 this Court that “[g]ood cause exists for the requested [e]xtension,” that “[a]ll Parties are diligently

1 *prosecuting their claims or defenses,”* that the parties “focused their efforts on mediation over the
 2 past 60 days,” that the parties “refrained from taking depositions prior to mediation,” and that the
 3 parties “*do not seek delay for their own sake, but jointly request an extension in good faith so*
 4 *that they may pursue the just and efficient resolution to this dispute.”* See *id.* at pp. 2:18-22, 4:9-
 5 20 (emphasis added).

6 Now, after the Court denied the Joint Motion for lack of a showing of good cause, and
 7 without conferring with AUSA or AUK, ISI self-servingly and individually moves this Court to
 8 modify the scheduling order for no reason other than “it’s all their fault.” ISI apparently seeks to
 9 withdraw its prior certification to this Court made in the Joint Motion—that ISI’s counsel
 10 drafted—that both parties “are diligently prosecuting their claims and defenses” to now argue its
 11 belief that only *it* has diligently pursued its case. ISI claims that it now “regrets pursuing an
 12 agreed motion for extension” and seeks to retract its prior certifications to this Court. Would ISI
 13 have “regretted” pursuing a joint motion if the Court had granted it? ISI’s apparent lack of candor
 14 with the Court and with AUSA and AUK is regrettable.

15 If ISI had informed AUSA and AUK that ISI’s representations in the Joint Motion were
 16 false (in ISI’s opinion), AUSA and AUK would not have agreed to sign ISI’s Joint Motion. At no
 17 time before it filed its unilateral motion to modify did ISI inform AUSA’s and AUK’s counsel that
 18 ISI believed that Defendants’ “delay” was grounds to modify the scheduling order. AUSA and
 19 AUK stand by their representations made in the Joint Motion and will respectfully comply with
 20 the Court’s Scheduling Order.

21 Although AUSA and AUK do not oppose the Court’s granting of a modified scheduling
 22 order for the reasons stated in the Joint Motion, AUSA and AUK are compelled to respond to
 23 ISI’s instant Motion to Modify Scheduling Order which is filled with mischaracterizations of
 24 purported “fact” and the “record” according to ISI. ISI’s motion provides this Court with no more
 25 grounds for support than that previously provided via the Joint Motion.¹ See Order (ECF No. 76).
 26 Notably absent from ISI’s motion is any explanation as to why the subject deadlines which are
 27

28 ¹ AUSA and AUK expressly dispute each of the mischaracterizations of fact presented by ISI in its
 Motion to Modify Scheduling Order.

1 months away cannot be met. Instead, ISI apparently seeks reconsideration of the Court’s ruling on
2 the Joint Motion and attempts to use its motion as an inappropriate vehicle to litigate various
3 discovery disputes.

4 II. ARGUMENT

5 The question before the Court in determining whether to grant or deny a request to modify
6 a scheduling order is whether the movant has established good cause, i.e., the subject deadlines
7 cannot reasonably be met despite the exercise of diligence. *See Johnson v. Mammoth Recreations,*
8 *Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). Courts look to the entire period of time already allowed in
9 determining good cause. *See Muniz v. United Parcel Serv., Inc.*, 731 F. Supp. 2d 961, 967 (N.D.
10 Cal. 2010) (“[N]ot only must parties participate from the outset in creating a workable Rule 16
11 scheduling order but they must also diligently attempt to adhere to that schedule throughout the
12 subsequent course of the litigation.”)

13 Neither AUSA nor AUK has intentionally obstructed or delayed in the discovery process.
14 In fact, the parties have previously agreed—and submit to this Court—that all parties are
15 diligently prosecuting their claims or defenses in this matter and do not seek delay for their own
16 sake. *See Joint Motion to Modify Scheduling Order* (ECF No. 75), at pp. 2:18-22, 4:9-20.
17 However, now, ISI has apparently changed its mind. In its Motion to Modify Scheduling Order,
18 ISI piecemeals together an inaccurate “record,” the majority of which references conduct only
19 from October 20, 2023 to present, when in reality this case has been pending for over a year before
20 that date. ISI argues that good cause exists because ISI has pursued discovery with diligence, but
21 AUSA and AUK have not, as AUSA and AUK allegedly delayed in executing a protective order
22 and objected to written discovery on grounds of which ISI disagrees. First, the fact that the parties
23 entered into a protective order about a month after a draft was circulated among them hardly
24 amounts to a delay necessitating the modification of the scheduling order, especially in light of the
25 fact that the parties had been litigating this case for about a year before any protective order was
26 discussed and ISI does not even allege the lack of a protective order hindered discovery in any
27 way.

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1 Second, AUSA and AUK timely responded to ISI's written discovery on December 4,
 2 2023.² ISI's entirely overbroad requests for production of documents and the objections asserted
 3 thereto and preserved by AUSA and AUK are currently the subject of a motion to compel pending
 4 before this Court, which AUSA and AUK need not discuss here. ISI's assertion that it has shown
 5 diligence because it responded to AUSA and AUK's written discovery responses within thirty
 6 minutes of service is questionable considering the number of requests, the length of the responses,
 7 and the detail of the objections. Regardless, both parties engaged in meet and confer efforts and
 8 those efforts hardly show a lack of diligence by AUSA or AUK.

9 ISI repeatedly mentions that it has produced thousands of *pages* of documents in this case
 10 as a basis to argue that only it has "diligently" pursued discovery. ISI hides the fact it only
 11 recently produced limited documents in September 2023 (almost a year after it filed this lawsuit)
 12 and those documents consisted almost entirely of communications between the parties (which
 13 were already in possession of all parties). It was not until Friday, January 26, 2024 at 6:17 PM
 14 that ISI produced the thousands of pages of documents that it references in its motion. ISI then
 15 filed its instant motion on Saturday, January 27, 2024 touting this last minute disclosure as
 16 evidence of its purported "diligence" in pursuing this case. ISI produced another batch of
 17 documents on January 30, 2024. ISI then concedes that it has not completed responding to
 18 AUSA's and AUK's discovery requests and intends to amend and supplement at a later date. It is
 19 noteworthy that ISI's production of documents were made *after* the failed mediation, *after* the
 20 Court denied the Joint Motion, and on the eve of filing its unilateral motion to modify. ISI's last
 21 minute and transparent attempt to manufacture is purported diligence to contrast its allegations of
 22 AUSA's and AUK's delay is not "good cause" to modify the scheduling order.

23 In ISI's bid to convince this Court that AUSA and AUK have obstructed and delayed, ISI
 24 fails to mention that it waited almost over a year after filing the lawsuit, and after the deadline to
 25 seek leave to amend, to file a motion for leave to file its First Amended Complaint (ECF No. 24).
 26 After filing its First Amended Complaint, ISI changed counsel and filed its Second Amended
 27

28 ² AUSA and AUK disagree with ISI's characterization of the alleged "agreement" to conditions
 regarding an extension of AUSA and AUK's deadline to respond to ISI's written discovery.

1 Complaint on November 24, 2023 (ECF No. 70). ISI's Second Amended Complaint contained
 2 substantial and material changes to its prior complaints in addition to several new claims and legal
 3 theories that needlessly expanded this lawsuit. AUSA and AUK filed their Answers on December
 4 13, 2023 (ECF Nos. 73 and 74). After that, that parties agreed to attempt mediation.

5 Regarding mediation, in an effort to avoid incurring additional costs and in an attempt to
 6 resolve this matter before a neutral mediator, *both parties* agreed to mediate on January 19, 2024.
 7 Both parties also agreed to refrain from taking third party depositions the week of the mediation.
 8 Mediation turned out to be unsuccessful in resolving the lawsuit, however, the effort to mediate
 9 was not in an attempt to "extract additional delay," but rather, was a good faith effort to settle this
 10 lawsuit. This is not the first time that ISI has inappropriately sought to wield its own desire to
 11 attempt mediation as vehicle to accuse AUSA and AUK of delay. The Court may recall that in
 12 September 2023, ISI argued that "*it* has been diligently pursuing the possibility of mediation" as
 13 an excuse to support its untimely motion to extend the deadline to file a motion to amend its
 14 pleadings. *See* Pl.'s Reply In Support of Motion for an Extension of Time (ECF No. 27). ISI's
 15 insistence of repeatedly injecting its own characterizations of the parties' settlement and mediation
 16 discussions in the public record appears purposeful and in violation of NRS 48.105. The Court
 17 should disregard and strike ISI's counsel's improper characterizations of the parties' settlement
 18 and mediation discussions.

19 Notwithstanding the fact that ISI has chosen to unilaterally file the instant motion without
 20 meeting and conferring with AUSA or AUK, AUSA and AUK remain willing to confer with ISI
 21 in the future if good cause exists to request modification of the scheduling order.

22 **III. CONCLUSION**

23 In accordance with the foregoing, AUSA and AUK do not oppose the request to modify
 24 the Court's scheduling order for those reasons stated in the Joint Motion, but explicitly dispute
 25 each of the mischaracterizations of the record presented by ISI in its motion. To the extent ISI
 26 seeks reconsideration of the Court's Order denying the Joint Motion, AUSA and AUK respect the

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1 Court's order and will comply with the Court's Scheduling Order.

2 DATED: February 10, 2024.

3 **FENNEMORE CRAIG, P.C.**

4 By: /s/ John D. Tennert

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9 *Attorneys for Defendants Amelco UK Ltd. and*

10 *Amelco USA, LLC*

CERTIFICATE OF SERVICE

I certify that I am an employee of FENNEMORE CRAIG, P.C., and that on this date, pursuant to FRCP 5(b), I am serving a true and correct copy of the **OPPOSITION TO PLAINTIFF ISI'S MOTION TO MODIFY SCHEDULING ORDER** on the parties set forth below by:

- _____ Hand delivery at parties' 16.1 conference
- _____ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices
- _____ Certified Mail, Return Receipt Requested
- _____ Via email, per the parties' agreement
- _____ Placing an original or true copy thereof in a sealed envelope and causing the same to be personally Hand Delivered
- _____ Federal Express (or other overnight delivery)
- XX E-service effected by CM/ECF

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DATED: February 10, 2024.

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Employee of FENNEMORE CRAIG, P.C.